

New Mexico Courts

Case Lookup

[Exit](#)

Name Search

Case Number Search

DWI Search

Case Detail

Ricky A Serna v. Angelo D Jacques

CASE DETAIL			
CASE NUMBER	CURRENT JUDGE	FILING DATE	COURT
D-117-CV-201500158	Attrep, Jennifer L.	04/24/2015	TIERRA AMARILLA DISTRICT

PARTIES TO THIS CASE			
PARTY TYPE	PARTY DESCRIPTION	PARTY #	PARTY NAME
D	Defendant	1	JACQUES ANGELO D
P	Plaintiff	1	SERNA RICKY A
		ATTORNEY: ROMERO JOSEPH L.	
		ATTORNEY: BASHAM MARK A.	

HEARINGS FOR THIS CASE					
HEARING DATE	HEARING TIME	HEARING TYPE	HEARING JUDGE	COURT	COURT ROOM
07/09/2015	9:30 AM	MOTION HEARING	Attrep, Jennifer L.	TIERRA AMARILLA DISTRICT COURT	Rio Arriba County Courthouse
05/13/2015	3:30 PM	STATUS CONFERENCE	Attrep, Jennifer L.	TIERRA AMARILLA DISTRICT COURT	

CIVIL COMPLAINT DETAIL				
COMPLAINT DATE	COMPLAINT SEQ #	COMPLAINT DESCRIPTION	DISPOSITION	DISPOSITION DATE
04/24/2015	1	CLS: JUDGMENT/ DISPOSITION	Dismissal by the Judge, Not for Lack of Prosecution	07/10/2015
COA SEQUENCE #	COA DESCRIPTION			
1	Restraining Order			
PARTY NAME		PARTY TYPE		PARTY #

REGISTER OF ACTIONS ACTIVITY					
EVENT DATE	EVENT DESCRIPTION	EVENT RESULT	PARTY TYPE	PARTY #	AMOUNT
07/10/2015	CLS: ORDER OF DISMISSAL				
	Order Dissolving Mutual No Contact Order and Dismissing Case With Prejudice				
07/10/2015	ORD: ORDER DENYING				
	Order Denying Motion for Protective Order				
06/30/2015	NTC: OF HEARING				
	Expedited Notice of Hearing July 9, 2015 9:30 am				
06/23/2015	ORD: ORDER				
	MUTUAL NO CONTACT ORDER				
06/09/2015	REQUEST FOR HEARING/ SETTING				
	D-117-CV-2015-00158 Expedited Request for Hearing				
06/09/2015	NTC: NOTICE				
	D-117--CV-2015-00158 Notice of Completion of Briefing of Motion for Protective Order, to Quash Subpoena and Notice of Non-Appearance				
06/09/2015	REPLY				
	D-117-CV-2015-00158 Plaintiff's Reply in Support of Motion for Protective Order, to Quash Subpoena and Notice of Non-Appearance				
06/04/2015	MTN: MOTION				
	Defendant s Unopposed Expedited Motion to Obtain an Expedited Hearing on Plaintiff s Motion for Protective Order				
06/03/2015	RESPONSE				
	Defendant s Response To Plaintiff s Motion for Protective Order				
06/02/2015	MTN: MOTION				
	D-117-CV-2015-00158 Motion for Protective Order, to Quash Subpoena and Notice of Non-Appearance				
05/29/2015	ANSWER				
05/22/2015	CERTIFICATE OF SERVICE				
	Certiicate of Service of Deposition Notices and Subpoena				
05/14/2015	REQUEST FOR COPY OF TAPES/CD				
05/12/2015	ORD: OF CONTINUANCE				
	Order Granting Motion for Continuance and Setting Status Conference for May 13, 2015				
05/12/2015	REPLY				
	Reply Concerning Defendnat's Motion to Continue Hearing				
05/12/2015	NTC: COMPLETION OF BRIEFING				
05/12/2015	RESPONSE				
	D-117-CV-2015-00158 Response to Defendant's Motion for Continuance of Hearing				
05/12/2015	MTN: FOR CONTINUANCE				

	Defendant's Motion for Continuance of Preliminary Injunction Hearing				
05/08/2015	AFFIDAVIT				
	D-117-CV-2015-00158 Affidavit of Richard A. Guillen				
05/08/2015	SUMMONS RETURN				
	D-117-CV-2015-00158 Summons Return (Angelo D. Jacques)				
04/30/2015	ORD: TEMPORARY RESTRAINING ORDER				
	Temporary Restraining Order				
04/28/2015	SUMMONS ISSUED				
	Angelo D Jacquez				
04/24/2015	OPN: COMPLAINT				
	Complaint and Application for Civil Restraining Order				

JUDGE ASSIGNMENT HISTORY

ASSIGNMENT DATE	JUDGE NAME	SEQUENCE #	ASSIGNMENT EVENT DESCRIPTION
04/24/2015	Attrep, Jennifer L.	1	INITIAL ASSIGNMENT

[Return](#)[Print](#)

Respectfully,

Everardo Gil

Program Officer
U.S. Department of Education
Office of Postsecondary Education

Phone: (202) 219-7000

From: Hines, Ralph
Sent: Tuesday, March 11, 2014 12:08 PM
To: Ricky Serna
Cc: Gil, Everardo
Subject: RE: Determination to OIG Complaint No. 14-201396; HSI-STEM Grant P0301C110094; NNMC

Dr. Serna,

I would like to schedule a conference call for Wednesday, March 12 at 2:00 pm our time. Please let me know if this day and time is agreeable to you. I will be joined on the call by Mr. Gil.

Ralph Hines

Acting Director

Hispanic-Serving Institutions

From: Ricky Serna [mailto:raserna@nnmc.edu]
Sent: Monday, March 10, 2014 3:12 PM
To: Hines, Ralph
Cc: Gil, Everardo
Subject: Determination to OIG Complaint No. 14-201396; HSI-STEM Grant P0301C110094; NNMC

Ralph,

Good afternoon, hope you're well. As you're aware, I have been working with Mr. Gil on an OIG complaint against our institution. Last week Mr. Gil made a determination that the College supplanted as a result of a faculty resignation just prior to the start of the 2013-14 school year. Mr. Gil has been kind enough to speak with me on the phone about his response and concerns with the College's actions as they pertain to the grant in question.

The President of the College has asked that I appeal to your perspective on the determination. I would greatly appreciate an opportunity to speak with you over the phone sometime this week. For consistency, I would like to invite Mr. Gil to participate in the discussion if at all possible.

I look forward to hearing back on your availability. Thanks in advance for your consideration.

Ricky Serna
Vice President for Advancement
Northern New Mexico College
505-692-4465

On Mon, Mar 10, 2014 at 7:13 AM, Gil, Everardo <Everardo.Gil@ed.gov> wrote:

Ricky,

Thank you for pointing out the incorrect date reference. A new email has been sent with the correction. If you wish to discuss the determination, I will be available today between 2:00pm and 3:00pm EDT.

Best regards,

Everardo Gil
Program Officer
U.S. Department of Education
Office of Postsecondary Education
Phone: (202) 219-7000

From: Ricky Serna [mailto:raserna@nnmc.edu]
Sent: Friday, March 07, 2014 12:29 PM
To: Gil, Everardo
Cc: Hines, Ralph; Foster, Lisa
Subject: Re: Determination to OIG Complaint No. 14-201396; HSI-STEM Grant P0301C110094; NNMC

Everardo,

Thanks for your response. Your narrative included a date reference that was not correct. You recapped that the third professor resigned in August 2012 when in fact the faculty resigned in August 2013, just prior to the start of the 2013-14 Academic Year.

Our immediate response to the resignation was to sustain the course offerings for the looming semester. A few weeks was not adequate time to fill a full-time faculty vacancy. As a result, we needed to use the budgeted I&G salary to hire adjuncts. The consequence of not doing so would have resulted in fewer course offerings, more specifically course cancellations. Had we simultaneously switched Dr. Biggs to the grant, the sudden, increased burden on our institutional budget would have been unbearable.

See below for the budget scenarios that the institution was faced with at the time of the faculty resignation and on very short notice prior to the start of the 2013-14 Academic Year. The actual salaries may vary slightly but the scenarios portray our position.

Pre-Resignation	
Faculty 1 and Dept. Chair (I&G)	\$56,000.00
Faculty 2 (I&G)	\$50,000.00
Faculty 3 (Grant)	\$50,000.00
Total (I&G)	\$106,000.00
Total Grant	\$50,000.00

Post-Resignation (potential)	
Faculty 1 and Dept. Chair (I&G)	\$56,000.00
Faculty 2 (I&G)	\$50,000.00
Adjuncts	\$14,000.00
Faculty 3 (Grant)	\$0.00
Total (I&G)	\$120,000.00
Total Grant	\$0.00

As you can see, our only alternatives (budget allowances) were to: 1. pay for the adjuncts with the grant - an option likely unacceptable; or 2. cancel courses. We believe we responded in the best interests of our students and the ES program.

As I mentioned in a previous correspondence, we are trying to fill the full-time position. As you may know, this is not easy to do when the position is funded by grant dollars. In July 2013, Dr. Biggs agreed to work on a grant when he signed his contract. Had we switched him off the grant, the difficulty of finding a faculty to replace him on soft dollars increases tremendously, especially a few weeks prior to the start of the semester.

Although I understand your position that we remain at two FTE, the difficulty in accepting the conclusion of supplanting rests in our lack of control for a faculty resignation. A resignation just prior to the start of the semester was unforeseeable. We responded with a priority placed on students and the program. The second consideration was given to our limited resources to fund the cost of the adjunct faculty who were necessary to sustain the course offerings for the Fall 2013. Our intent was never to lighten the college's financial commitment to the ES program.

I hope that the information above might encourage a reconsideration of your determination. If appropriate, the President of the College and I are both willing to discuss the matter with you over the phone to answer any additional questions that you may have.

Thanks,

Ricky

On Thu, Mar 6, 2014 at 3:46 PM, Gil, Everardo <Everardo.Gil@ed.gov> wrote:

Ricky,

Your cooperation while we worked to resolve this issue has been greatly appreciated. Thank you. Based on the information that has been provided over the course of the inquiry, the following determination has been made with regard to Title III, HSI-STEM grant award P031C110094 and the allegations of misappropriation of federal funds by Northern New Mexico College (NNMC):

It has been determined that grant funds were used to pay faculty without increasing the total number of faculty in the Environmental Science program, and therefore, use of these funds do not meet the conditions of the approved grant. Any grant funds used by NNMC to pay for activities that do not meet the conditions of the grant or that have been determined to be unallowable, must be reimbursed to the grant. These funds may be used when conditions of the approved grant are met.

Just to recap, on October 30, 2013, a complaint was filed with the Office of Inspector General alleging that NNMC has been misappropriating Title III, HSI-STEM grant funds through supplanting. In response to my inquiry, you indicated that in August of 2012 NNMC received approval to use grant funds to pay the salary for an additional Environmental Science faculty member (for clarification, in August of 2012, grant funds were approved to hire an additional Environmental Science faculty member for the 2012-2013 academic year in order to expand Environmental Science course offerings at NNMC). You also indicated that NNMC was not able to hire the additional Environmental Science faculty member for the 2012-2013 academic year and instead intended to carry-out this activity during the following academic year (2013-2014). (For future reference, it should be communicated to the Program Officer as soon as it is known that the activity will be postponed. This was not communicated to me until the current inquiry was made.)

You explained that NNMC planned to increase the number of Environmental Science faculty for the 2013-2014 academic year and that, in July of 2013, an Environmental Science faculty member was added. This faculty member is currently being paid through the Title III, HSI-STEM grant. You went on to say that in August of 2013, one month

after the addition of an Environmental Science faculty, one of the previously existing Environmental Science Professors resigned, bringing the total number of Environmental Science faculty back down to its previous level, where it currently stands.

Since the resignation of the previously existing Environmental Science Professor occurred in August, 2012, and by extension, prior to the start of the 2013-2014 academic year, the number of Environmental Science faculty at NNMC has not increased. Yet, since July of 2013, NNMC has continued to use grant funds to pay the salary of one Environmental Science faculty. Since there was no change in what existed previously at the institution (with regard to the number of Environmental Science faculty) other than a faculty member being paid a salary through Title III, HSI-STEM grant funds instead of being paid by the Institution, this is considered supplanting and thus unallowable per 34 CFR part 606.30 (b).

Please provide the total amount to be reimbursed to the grant along with an explanation of how the amount was determined.

Feel free to contact me with any questions or concerns.

Respectfully,

Everardo Gil

Program Officer
U.S. Department of Education
Office of Postsecondary Education

Phone: (202) 219-7000

From: Ricky Serna [mailto:raserna@nnmc.edu]
Sent: Friday, February 21, 2014 10:53 AM
To: Gil, Everardo
Cc: Hines, Ralph
Subject: Re: NNMC Title III P0301C110094

Everardo,

At the time the position was approved, the College was "all hands on deck" with a major financial recovery plan. The Plan included the completion of 3 audits over the course of 10 months. This plan came to an end in November 2012 with the timely completion of the FY12 Audit. During this time we were notified that the Dean for the College of Arts and Sciences was retiring at the end of the 2013 Academic Year. Our priority at the time was to complete a search for her replacement. To date that position also remains staffed with an interim who is also serving as our Provost.

In short, we're a lean College and we do our best to not let these vacancies affect us. On the academic side, it becomes difficult filling these positions during the academic year, as most faculty are securing contracts sometime in June/July.

Hope this answers your concerns. Thanks for your attention.

RS

On Wed, Feb 19, 2014 at 9:33 AM, Gil, Everardo <Everardo.Gil@ed.gov> wrote:

Ricky,

While we understand hiring delays do occur, they should be communicated to the program officer as soon as they are known. Please elaborate on the reason(s) for the hiring delay.

Thanks again,

Everardo Gil
Program Officer
U.S. Department of Education

From: Ricky Serna [raserna@nnmc.edu]
Sent: Wednesday, February 19, 2014 11:18 AM
To: Gil, Everardo
Cc: Hines, Ralph; Harry Rommel
Subject: Re: NNMC Title III P0301C110094

Everardo,

We were unable to complete the hire in the 2013 Academic Year. Perhaps the confusion was on our part that the approval would also carry into the 2014 Academic Year. Was this an incorrect assumption? Thanks!

RS

On Wed, Feb 19, 2014 at 9:14 AM, Gil, Everardo <Everardo.Gil@ed.gov<mailto:Everardo.Gil@ed.gov>> wrote:
Ricky,

Per the approved request dated June 8, 2012, an additional Environmental Science faculty member was to be hired for the 2012-2013 academic year. If I understand correctly, an academic year generally spans from September through the following June. You indicate that the additional faculty member was hired in July of 2013, which would have occurred after the 2012-2013 academic year. Please explain.

Thank you,

Everardo Gil
Program Officer
U.S. Department of Education

From: Ricky Serna [raserna@nnmc.edu<mailto:raserna@nnmc.edu>]
Sent: Monday, February 17, 2014 11:19 AM
To: Gil, Everardo
Cc: harrison rommel
Subject: Re: NNMC Title III P0301C110094

Everardo,

Once again, thank you for a response.

At the end of the 2013 Academic Year, the College had a total of two full-time faculty in the Environmental Sciences Department. The College added the third full-time faculty position in early July 2013. This third position was funded by the Title III grant, as you approved. The appointment was filled by Dr. James Biggs.

In August, one of the Environmental Science Professors resigned her position with the College, bringing the total full-time faculty back down to two. This resignation had an impact on our course offerings. We therefore offered one less course in the Fall 2013 semester when compared to the Fall 2012 semester. We are trying to address this issue with adjunct faculty and ultimately filling the vacant full-time position.

I would also be remiss if I didn't share that the College is currently having personnel related issues with Dr. Biggs. These issues do not include concerns with the management of the title III project. I do however believe that the issues are prompting Mr. Biggs' complaints regarding his position with the grant.

Our intentions are to meet with Dr. Biggs and bring an end to his inappropriate actions and accusations. We will continue to expect that Dr. Biggs play a role in the success of the project. Should our expectations not be met in this regard, we will notify you of a change in project personnel.

Once again, please do not hesitate to contact me with any questions.

Ricky Serna
505-692-4465

----- Forwarded message -----

From: Gil, Everardo
<Everardo.Gil@ed.gov<mailto:Everardo.Gil@ed.gov><mailto:Everardo.Gil@ed.gov<mailto:Everardo.Gil@ed.gov>>>
Date: Tue, Feb 4, 2014 at 6:02 PM
Subject: RE: NNMCM Title III P0301C110094
To: Ricky Serna
<raserna@nnmc.edu<mailto:raserna@nnmc.edu><mailto:raserna@nnmc.edu<mailto:raserna@nnmc.edu>>>

Ricky,

Thank you for the clarification. Based on the original complaint, it was not clear which grant related activity was being referenced in the supplanting allegation. It was also unclear how the alleged supplanting was occurring. Subsequent to the original complaint, I received additional information indicating that the grant activity in question was for the funding of a new Environmental Science faculty member. The request for funding a new Environmental Science faculty for the 2012-2013 academic year was approved on June 8, 2012, which you reference in your response. The request indicated that a new Environmental Science faculty member was required in order to expand course offerings considered essential for meeting the goals of the grant.

In light of the information I have received, an additional allegation must be addressed. As noted above, approval was given to the institution to use grant funds to pay for a new Environmental Science faculty member for the 2012-2013 academic year in order to expand course offerings. Based on this agreement, it was presumed that course offerings in Environmental Science would increase. The complaint alleges that there are fewer courses being taught in the Environmental Science program rather than more, which would be contrary to the approved request.

Please address this additional allegation.

Respectfully,

Everardo Gil
Program Officer
U.S. Department of Education
Office of Postsecondary Education
Phone: (202) 219-7000<tel:%28202%29%20219-7000><tel:%28202%29%20219-7000>

From: Ricky Serna [mailto:raserna@nnmc.edu<mailto:raserna@nnmc.edu>]
Sent: Thursday, January 23, 2014 9:34 PM
To: Gil, Everardo
Subject: Re: NNMC Title III P0301C110094

Everardo,

My apologies, you are correct. I am glad you received our response. Please let me know if you have any additional questions. Thanks!

RS

On Thu, Jan 23, 2014 at 4:49 PM, Gil, Everardo
<Everardo.Gil@ed.gov<mailto:Everardo.Gil@ed.gov><mailto:Everardo.Gil@ed.gov><mailto:Everardo.Gil@ed.gov>>>
wrote:
Good afternoon Ricky,

Just for clarification, in your response letter, you refer to an email correspondence dated June 08, 2013. I believe you meant June 08, 2012, which is the date of the email correspondence you attached along with your response. Is this correct?

Everardo Gil
Program Officer
U.S. Department of Education
Office of Postsecondary Education
Phone: (202) 219-7000 <tel:%28202%29%20219-7000> <tel:%28202%29%20219-7000>

From: Ricky Serna
[mailto:raserna@nnmc.edu<mailto:raserna@nnmc.edu><mailto:raserna@nnmc.edu<mailto:raserna@nnmc.edu>>]
Sent: Tuesday, January 14, 2014 11:01 AM
To: Gil, Everardo
Cc: Harry Rommel
Subject: NNMC Title III P0301C110094

Everardo,

Attached is a response to your inquiry dated December 16, 2013. Please do not hesitate to contact me with any questions. Thanks!

--

Ricky Serna

Vice President for Institutional Advancement

Northern New Mexico College

921 Paseo de Oñate

Española, New Mexico 87532

505-747-2116 <tel:505-747-2116> (O)

505-692-4465 <tel:505-692-4465> (C)

This e-mail transmission, including any attachments, is intended only for the named recipient(s) and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this transmission in error, or are not the named recipient(s), please notify NNMC immediately by return e-mail and permanently delete this transmission, including any attachments.

--

Ricky Serna

Vice President for Institutional Advancement

Northern New Mexico College

921 Paseo de Oñate

Española, New Mexico 87532

505-747-2116<tel:505-747-2116> (O)

505-692-4465<tel:505-692-4465> (C)

This e-mail transmission, including any attachments, is intended only for the named recipient(s) and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this transmission in error, or are not the named recipient(s), please notify NNMC immediately by return e-mail and permanently delete this transmission, including any attachments.

--

Ricky Serna

Vice President for Institutional Advancement

Northern New Mexico College

921 Paseo de Oñate

Española, New Mexico 87532

505-747-2116<tel:505-747-2116> (O)

505-692-4465<tel:505-692-4465> (C)

--

Ricky Serna

Vice President for Institutional Advancement

Northern New Mexico College

921 Paseo de Oñate

Española, New Mexico 87532

505-747-2116<tel:505-747-2116> (O)

505-692-4465<tel:505-692-4465> (C)

This e-mail transmission, including any attachments, is intended only for the named recipient(s) and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received

this transmission in error, or are not the named recipient(s), please notify NNMC immediately by return e-mail and permanently delete this transmission, including any attachments.

--

Ricky Serna

Vice President for Institutional Advancement

Northern New Mexico College

921 Paseo de Oñate

Española, New Mexico 87532

505-747-2116 (O)

505-692-4465 (C)

This e-mail transmission, including any attachments, is intended only for the named recipient(s) and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this transmission in error, or are not the named recipient(s), please notify NNMC immediately by return e-mail and permanently delete this transmission, including any attachments.

--

Ricky Serna

Vice President for Institutional Advancement

Northern New Mexico College

921 Paseo de Oñate

Española, New Mexico 87532

505-747-2116 (O)

505-692-4465 (C)

This e-mail transmission, including any attachments, is intended only for the named recipient(s) and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this transmission in error, or are not the named recipient(s), please notify NNMC immediately by return e-mail and permanently delete this transmission, including any attachments.

--

Ricky Serna

Vice President for Institutional Advancement

Northern New Mexico College

921 Paseo de Oñate

Española, New Mexico 87532

505-747-2116 (O)

505-692-4465 (C)

This e-mail transmission, including any attachments, is intended only for the named recipient(s) and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this transmission in error, or are not the named recipient(s), please notify NNMCC immediately by return e-mail and permanently delete this transmission, including any attachments.

--
Ricky Serna

Vice President for Institutional Advancement

Northern New Mexico College

921 Paseo de Oñate

Española, New Mexico 87532

505-747-2116 (O)

505-692-4465 (C)

This e-mail transmission, including any attachments, is intended only for the named recipient(s) and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this transmission in error, or are not the named recipient(s), please notify NNMCC immediately by return e-mail and permanently delete this transmission, including any attachments.



Ricky Serna <raserna@nnmc.edu>

**RE: Determination to OIG Complaint No. 14-201396; HSI-STEM Grant
P0301C110094; NNMC**

1 message

Gil, Everardo <Everardo.Gil@ed.gov>

To: Ricky Serna <raserna@nnmc.edu>

Thu, Apr 17, 2014 at 3:26 PM

Cc: "Hines, Ralph" <Ralph.Hines@ed.gov>, "Foster, Lisa" <Lisa.Foster@ed.gov>

Dear Mr. Serna:

Following the phone conference on March 12, 2014 between you, Mr. Ralph Hines and myself, the previous determination, made on March 06, 2014, regarding the alleged supplanting of funds by Northern New Mexico College (NNMC), is being replaced with the following:

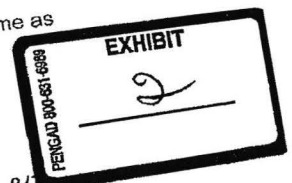
In July of 2013, NNMC hired an additional Environmental Science faculty member. This faculty member is paid using funds from grant award P031S110094. The Department authorized NNMC to use grant funds to pay for this faculty member in August of 2012 to allow the institution to increase its course offerings in Environmental Science. The additional Environmental Science faculty was to be hired for the 2012-2013 academic year. However, the hiring was delayed by one year. In August of 2013, one month after the hiring of the additional Environmental Science faculty member, one of the existing Environmental Science faculty members resigned. To replace the department faculty member, NNMC hired two adjunct faculty members to teach courses that would have otherwise been canceled.

The authorization given by the Department in August of 2012, which allowed NNMC to use grant funds to pay the salary of an additional Environmental Science faculty member, was based on NMCC's explanation and commitment to expanding course offerings in Environmental Science. Based on NMCC's commitment, the Department expected that when the additional faculty member was hired in July of 2013, the number of course offerings for the 2013 fall term would increase. The one-year delay in hiring the additional faculty member gave NNMC ample time to plan and offer more courses. While it may be true that the of hiring adjunct faculty was necessary to avoid reducing course offerings planned for the 2013 fall term, NMCC did not increase its course offerings, and there is no evidence that NMCC had taken steps to increase the course offerings even before the change in faculty. Based on the information you provided in our conference call, NMCC's planned course offerings during the fall 2013 term in fact decreased in comparison to the previous year's fall term. This indicates that NMCC used the grant funds to maintain course offerings at or below previous levels, rather than to increase course offerings.

Because the Department's authorization for the use of grant funds was based on NMCC's commitment to increasing course offerings in Environmental Science, the conditions of the authorization were not met. Therefore, the use of grant funds to pay the salary of the Environmental Science faculty member hired in July of 2013 is unallowable. Moreover, by using grant funds to pay faculty to maintain course offerings at or below previous levels, NMCC violated the requirement that it use these grant funds to supplement and not supplant current funding. 34 CFR 606.30(b)

NNMC must reimburse the grant the amount related to the unauthorized use of funds. Please notify me as soon as the reimbursement has been completed.

<https://mail.google.com/mail/u/0/?ui=2&ik=9989c6c41d&view=pt&cat=Title%20II%20S...> 8/1
NNMC000272



07/17/2009 JDG: JUDGE ASSIGN
ADMINISTRATIVE
ADMINISTRATIVE ORDER TO REASSIGN CASE
PER CHIEF JUDGE STEPHEN D PFEFFER'S ORDER, THIS CASE
IS REASSIGNED TO JUDGE SHERI A RAPHAELSON, DIV V:
EFFECTIVE JULY 17, 2009

07/16/2009 NTC: NOTICE
NOTICE OF COMPLETION OF BRIEFING MOTION TO SUPPLEMENT
RECORD ON APPEAL

07/15/2009 NCJ: AMENDED
JUDGMENT/ORDER
SECOND AMENDED JUDGMENT

07/13/2009 REPLY
IPM'S REPLY TO NORTHERN'S RESPONSE TO IPM'S MOTION
TO SUPPLEMENT RECORD ON APPEAL

06/29/2009 RESPONSE
NORTHERN'S RESPONSE IN OPPOSITION TO IPM'S MOTION TO
SUPPLEMENT RECORD ON APPEAL

06/11/2009 MTN: MOTION
MOTION TO SUPPLEMENT RECORD ON APPEAL--BY APPELLANT INSTITU-
TIONAL PROJECT MANAGEMENT

02/09/2009 REQUEST FOR HEARING/
SETTING
APPEAL OF REJECTION OF BID FOR PUBLIC WORKS CONSTRUCTION
PROJECT

02/09/2009 MISCELLANEOUS ENTRY
SUBMISSION OF PACKAGE IN COMPLIANCE WITH LRI-306

01/27/2009 REPLY
REPLY TO RESPONSE TO STATEMENT OF APPELLATE ISSUES

01/12/2009 RESPONSE
REGENTS OF NORTHERN NEW MEXICO COLLEGE'S (NORTHERN)
RESPONSE TO IPM'S STATEMENT OF APPELLATE ISSUES

12/18/2008 ORD: EXTENDING TIME
AGREED ORDER FOR EXTENSION OF TIME
UNTIL 1/12/2009 IN WHICH TO FILE RESPONSE TO THE STATEMENT
OF APPELLATE ISSUES

12/12/2008 MOTION/ PETITION TO
EXTEND TIME
UNOPPOSED MOTION FOR EXTENSION OF TIME

11/25/2008 STATEMENT OF ISSUES
/SUPREME COURT
STATEMENT OF APPELLATE ISSUES

11/05/2008 LRA RECORD ON APPEAL
AMENDED RECORD ON APPEAL

10/30/2008 LRA RECORD ON APPEAL

10/08/2008 NTC: JUDGE ASSIGNMENT
NOTICE OF JUDGE ASSIGNMENT
REASSIGNED TO JUDGE JAMES A HALL DUE TO THE EXCUSAL OF

JUDGE TIMOTHY L GARCIA PER PLAINTIFF

10/08/2008 JDG: JUDGE ASSIGN
EXCUSAL/ CHALLENGE
PEREMPTORY CHALLENGE
EXCUSAL OF JUDGE TIMOTHY L GARCIA PER PLAINTIFF

10/07/2008 CERTIFICATE OF SERVICE
10/07/2008 CERTIFICATE OF SERVICE
10/01/2008 OPN: NOTICE OF LOWER
COURT APPEAL
NOTICE OF APPEAL

JUDGE ASSIGNMENT HISTORY

ASSIGNMENT DATE	JUDGE NAME	SEQ #	ASSIGNMENT EVENT DESCRIPTION
10/01/2008	Garcia, Timothy L.	1	INIT AL ASSIGNMENT
10/08/2008	Hall, James A.	2	Judge Excused/Challenged
07/17/2009	Raphaelson, Sheri A.	3	Administrative Assignment

INSTITUTIONAL PROJECT VS REGEN

CASE DETAIL

CASE #	CURRENT JUDGE	FILING DATE	COURT
D-117-CV-200800427	Raphaelson, Sheri A.	10/01/2008	TIERRA AMARILLA District

PARTIES TO THIS CASE

PARTY TYPE	PARTY DESCRIPTION	PARTY #	PARTY NAME
DE	Defendant Appellee	1	REGENTS OF NORTHERN NEW MEXICO COLLEGE STATE OF NEW MEXICO
PP	Plaintiff Appellant	1	INSTITUTIONAL PROJECT MANAGEMENT INC

ATTORNEY: BEISMAN EMELINE B.

CIVIL COMPLAINT DETAIL

COMPLAINT DATE	COMPLAINT SEQ #	COMPLAINT DESCRIPTION	DISP	DISP DATE
10/01/2008	1	OPN: COMPLAINT		

COA SEQ #	COA DESCRIPTION
1	Administrative Appeal, On the Record

PARTY NAME	PARTY TYPE	PARTY #
REGENTS OF NORTHERN NEW MEXICO COLLEGE STATE OF NEW MEXICO	DE	1
INSTITUTIONAL PROJECT MANAGEMENT INC	PP	1

HEARINGS FOR THIS CASE

HEARING DATE	HEARING TIME	HEARING TYPE	HEARING JUDGE	COURT	COURT ROOM
02/02/2010	9:00 AM	HEARING	Raphaelson, Sheri A.	TIERRA AMARILLA	

REGISTER OF ACTIONS ACTIVITY

EVENT DATE	EVENT DESCRIPTION	EVENT RESULT	PARTY TYPE	PARTY #	AMOUNT
01/28/2010	CLS: STIPULATED DISMISSAL STIPULATION AND ORDER OF DISMISSAL				
01/12/2010	NTC: HEARING (CIVIL) NOTICE OF HEARING 2/2/2010 @ 10:30AM RIO ARriba COURTHOUSE ORAL ARGUMENT				
10/22/2009	NTC: OF NON-AVAILABILITY NOTICE OF UNAVAILABILITY FRANK C SALAZAR WEEK OF 10/26/2009 11/2,3,4,5, WEEK OF 11/9 NOV 18, 19, 20, 26, 27, AND 30 DEC 1, 2, 3, 4, 12/23/2009-1/31/2009				
08/31/2009	ORD: ORDER ORDER DENYING MOTION TO SUPPLEMENT RECORD ON APPEAL				
07/21/2009	REQUEST FOR HEARING/ SETTING REQUEST FOR HEARING MOTION TO SUPPLEMENT RECORD ON APPEAL				

FIRST JUDICIAL DISTRICT COURT
COUNTY OF RIO ARriba
STATE OF NEW MEXICO

NORTHERN NEW MEXICO COLLEGE,

Plaintiff,

v.

D-117-CV-2015-00041

MONUMENT, LLC,

Defendant.

**DEFENDANT MONUMENT, LLC'S ANSWER
TO PETITION FOR DECLARATORY RELIEF**

Defendant Monument, LLC ("Monument") by and through its counsel of record, Jason Bowles of Bowles Law Firm, hereby submits their answer to the Petition for Declaratory Relief, and states as follows:

Defendant Monument, LLC's admits to paragraphs 1-6, 9-18, 23, 24-27, 29-34, 39-41, 47, 52. All remaining paragraphs and the prayer for relief are denied.

AFFIRMATIVE DEFENSES

As and for their affirmative defenses, the Defendants assert and state as follows:

FIRST AFFIRMATIVE DEFENSE

The petition fails to state a ground upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

All of the claims in the petition are subject to mandatory arbitration, which has not been waived.

THIRD AFFIRMATIVE DEFENSE

The anti-donation clause is inapplicable.

FOURTH AFFIRMATIVE DEFENSE

The Bateman Act and any corresponding laws or constitutional provisions are inapplicable to these facts and subject to exception in whole or part even if applicable.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff and/or its agents have unclean hands and are not entitled to any equitable relief therefore.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff is estopped by its conduct from denying liability under the PDA and DA and has waived any defenses.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has not met all prerequisites and/or exhausted remedies to raise statutory defenses.

EIGHTH AFFIRMATIVE DEFENSE

Defendant reserves the right to amend and raise additional affirmative defenses as discovery progresses.

Respondent requests a jury and will file our jury demand in Monument's Complaint for Breach of Contract, which it will ask this Court to consolidate with the instant Petition. Because of the commonality of issues in the Complaint and Petition, it would seem that A consolidated jury trial for both actions would be the most efficient way in which to proceed.

WHEREFORE, the Defendants pray that the Petition be dismissed with prejudice and that the Defendants be awarded their costs, attorney's fees, and such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Jason Bowles

Jason Bowles

Bowles Law Firm

Post Office Box 25186

Albuquerque, New Mexico 87125-5186

Telephone: (505) 217-2680

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent through the ESF system, which caused the following parties to be served by electronic means, as reflected on the Notice of Electronic Filing this 21st day of October, 2015 to the counsel listed below.

Mr. Peter Dwyer

Mark A. Basham

Basham & Basham, P.C.

/s/ Jason Bowles

Jason Bowles

Bowles Law Firm

STATE OF NEW MEXICO
COUNTY OF RIO ARriba
FIRST JUDICIAL DISTRICT COURT

MONUMENT, LLC,

Plaintiff,

D-117-CV-2015-00359

vs.

NORTHERN NEW MEXICO COLLEGE,
ROSARIO "Chayo" GARCIA,
ALFRED HERRERA, KEVIN POWERS,
DONALD MARTINEZ, JR., and
MICHAEL BRANCH,

Defendants.

COMPLAINT FOR BREACH OF CONTRACT AND DAMAGES

Plaintiff Monument, LLC, by and through their counsel of record, Bowles Law Firm, hereby submits their complaint and states as follows:

1. Plaintiff Monument, LLC, is an Indiana Limited Liability Company.
2. Defendant Northern New Mexico College, (hereinafter "NNMC") is a constitutionally established institution of higher education under the New Mexico State Constitution.
3. Defendant Rosario "Chaya" Garcia, served on the Board of Regents for NNMC in Rio Arriba County, New Mexico.
4. Defendant Alfred Herrera, served on the Board of Regents for NNMC in Rio Arriba County, New Mexico.
5. Defendant Kevin Powers, served on the Board of Regents for NNMC in Rio Arriba County, New Mexico.

6. Defendant Donald Martinez, Jr., served on the Board of Regents for NNMC in Rio Arriba County, New Mexico.
7. Defendant Michael Branch, served on the Board of Regents for NNMC in Rio Arriba County, New Mexico.
8. The events giving rise to this lawsuit occurred in Rio Arriba County, New Mexico.
9. Jurisdiction and Venue are proper in this Court.
10. Plaintiff and Defendant entered into the “Agreement for Preliminary Development Assessment between Northern New Mexico College and Monument, LLC dated September 30, 2013” (hereinafter the “PDA”), a copy of which is attached hereto as **Exhibit A**.
11. The PDA states in paragraph O, that the “Agreement is entered into in the State of New Mexico, and its governed by its laws, without regard to its principles of conflicts of laws.”
12. The PDA called for work to be done by Monument to assess the viability of a project to build dormitories.
13. The work to be performed under the PDA was to be performed and completed on or before November 30, 2013.
14. The compensation to Monument under the PDA was not to exceed \$336,450.00.
15. Monument sent invoice number NNMC-113013 to NNMC which was dated 12/01/13 and was in the amount of \$326,898.03. A copy of the Invoice is attached hereto as **Exhibit B**.

16. NNMC paid Monument \$326,898.03, the checks showing payment as attached as **Exhibit C**.
17. On November 27, 2013, the Board of Regents for NNMC considered the viability of the project to build dormitories and approved the deliverables under the PDA. A copy of the meeting minutes are attached hereto as **Exhibit D**.
18. Between November 27, 2013 and April 14, 2014, NNMC Board of Regents considered various financing options for the proposed dormitory project.
19. On April 14, 2014, NNMC and Monument entered into a second contract entitled "Development Agreement Between Northern New Mexico College and Monument, LLC," (hereinafter the "DA") a copy of which attached hereto as **Exhibit E**. Minutes showing the Board approved on the date of the Contract are attached as **Exhibit F**.
20. The DA scope of work covered overseeing the development design and construction of the dorms.
21. The DA called for a final development budget to be submitted within 30 days of the effective date of the DA. (See paragraph 7.1 of Exhibit E.)
22. The Plaintiff has made a demand for \$603,194.79 from the Defendant relying upon a series of invoices attached hereto as **Exhibit G**.
23. Plaintiff's demand arises from claims by Monument for payments relating to the dorm project under either the PDA or the DA.
24. NNMC specifically agreed in the Recitals "C" of the DA that, "As an accommodation, it is understood that unpaid fees and reimbursable expenses for PDA services as well as additional invoiced development fees and interest,

as outlined in Exhibit 9, will be paid with the first draw at the close of financing. In the unlikely event that NNMC cannot obtain financing, as indicated by financial or agency notice declining NNMC's application/submission, payment to Monument shall be immediately due."

25. The Court has jurisdiction over the parties and the claims under the Constitution and laws of the State of New Mexico, and the terms of the PDA and DA.

Count I: Breach of contract

26. The allegations contained in Paragraphs 1 through 25 of the Complaint are re-alleged and incorporated as if fully set forth herein.
27. Defendants have breached the terms of the PDA or DA by failing to pay invoices relating to the dorm project under either the PDA or the DA.
28. As noted in the DA, NNMC specifically agreed in the Recitals C, "As an accommodation, it is understood that unpaid fees and reimbursable expenses for PDA services as well as additional invoiced development fees and interest, as outlined in Exhibit 9, will be paid with the first draw at the close of financing. In the unlikely event that NNMC cannot obtain financing, as indicated by financial or agency notice declining NNMC's application/submission, payment to Monument shall be immediately due."
29. Despite several demands, to date, NNMC has failed to pay the outstanding balance from the invoices.
30. The outstanding balance is \$603,194.79 and should accrue interest at the pre-judgment rate of 8.75% per annum until paid in full.

WHEREFORE, Plaintiff respectfully requests this Court grant Judgment in its favor

against NNMC, Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch, jointly and severally in the amount of \$603,194.79 plus prejudgment interest at the rate of 8.75% and post judgment interest at the rate of 8.75% until the amount is paid in full and any such further relief as the Court deems just and proper.

Count II: Breach of covenant of good faith and fair dealing

31. The allegations contained in Paragraphs 1 through 30 of the Complaint are re-alleged and incorporated as fully set forth herein
32. New Mexico implies a covenant of good faith and fair dealing in all contracts.
33. The PDA and DA are contracts subject to the implied covenant of good faith and fair dealing.
34. Defendants' failure to pay the balance of invoices relating to the dorm project under either the PDA or the DA was in bad faith.
35. Bad faith is the absence of good faith. By failing, in bad faith, to pay Plaintiff the balance from invoices relating to the dorm project either under the PDA or the DA, Defendants breached the covenant of good faith and fair dealing.
36. In the alternative, Defendants failure to pay Plaintiff the balance from invoices relating to the dorm project either under the PDA or the DA constituted a wrongful and intentional use of the contract, by Defendant, to Plaintiff's detriment.
37. Defendants' breach of contract actually and proximately caused Plaintiff to suffer damages in an amount to be determined at trial.

38. Defendants' breach was made in reckless disregard for Plaintiff's interests, or was based on a dishonest judgment, or was otherwise malicious, willful or wanton.

WHEREFORE, Plaintiff respectfully prays this Court enter judgment against Defendants NNMC, Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch, jointly and severally, including an award of attorney's fees and costs and for an award of compensatory damages and punitive damages in an amount to be proven at trial on the merits and any such further relief as the Court deems just and proper.

Count III: Debt and money due

39. The allegations contained in Paragraphs 1 through 38 of the Complaint are re-alleged and incorporated as if fully set forth herein.
40. Defendants have agreed to pay to Plaintiff the sum of \$603,194.79 pursuant to the terms of the PDA or DA.
41. The Agreement is considered an open account under New Mexico law.
42. Plaintiff is entitled to his reasonable attorney's fees in collecting the amounts under the Agreement.

WHEREFORE, Plaintiff respectfully requests this Court enter judgment against Defendants NNMC, Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch, jointly and severally in the amount of \$603,194.79 plus prejudgment interest at the rate of 8.75% and post judgment interest at the rate of 8.75% until the amount is paid in full and any such further relief as the Court deems just and proper.

Count IV: Fraud and Misrepresentation

43. The allegations contained in Paragraphs 1 through 42 of the Complaint are re-alleged and incorporated as if fully set forth herein.
44. Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch acted on behalf of NNMC as members of the Board of Regents for NNMC during contract negotiations between Plaintiff and NNMC.
45. Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch held themselves out as agents of NNMC and were in fact agents of NNMC.
46. Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch made representations concerning the Board's authority to enter into the PDA and DA, which Plaintiff relied upon in taking actions consistent with Plaintiff's performance under the agreements.
47. Upon information and belief, Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch entered into the PDA and DA all the while knowing that NNMC would seek to discharge their obligations under the PDA and DA.
48. Upon information and belief, Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch entered into the PDA and DA without having the proper authority to enter into such agreements.
49. Upon information and belief, Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch entered into the PDA and DA for the sole purpose of deceiving Plaintiff, knowing that Plaintiff would rely on the PDA and DA and provide NNMC with hundreds of thousands of

dollars worth of predevelopment information that NNMC never intended to pay for.

50. Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch knew their actions were false and/or misleading when made.
51. Plaintiff has suffered damages as a result of Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch's conduct.
52. The actions of Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch in making false and misleading statements to which Plaintiff relied constitutes fraud and was made willfully, wantonly, recklessly, maliciously and intentionally and justifies an award of punitive damages.
53. NNMC acquiesced in the actions of Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch and

WHEREFORE, Plaintiff respectfully requests this Court enter judgment against Defendants NNMC, Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch, jointly and severally in the amount of \$603,194.79 plus prejudgment interest at the rate of 8.75% and post judgment interest at the rate of 8.75% until the amount is paid in full and any such further relief as the Court deems just and proper.

Count V: Unfair trade practices

54. The allegations contained in Paragraphs 1 through 53 of the Complaint are re-alleged and incorporated as if fully set forth herein.

55. Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch intentionally made deceptive, false and misleading statements in violation of NMSA § 57-12-1 (the Unfair Practices Act or "UPA").

WHEREFORE, Plaintiff respectfully prays this Court enter judgment against Defendants NNMC, Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch, jointly and severally, including an award of attorney's fees and costs and for an award of compensatory damages and punitive damages in an amount to be proven at trial on the merits and any such further relief as the Court deems just and proper.

Count VI: Prima Face Tort

56. The allegations contained in Paragraphs 1 through 55 of the Complaint are re-alleged and incorporated as fully set forth herein.

57. Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch intentionally and unilaterally decided to make false and misleading statement designed to have Plaintiff rely upon those statements to his detriment.

58. Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch made these statements with the intent to harm Plaintiff.

59. In doing so, Defendants Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch intended or knew with certainty that such acts would cause harm to Plaintiff.

60. The acts of NNMC, Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch caused harm to Plaintiff.
61. The conduct of Defendants NNMC, Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch were not justifiable under the circumstances.
62. The conduct of Defendants was willful, wanton, reckless, malicious and intentional, and justifies an award of punitive damages.

WHEREFORE, Plaintiff respectfully prays this Court enter judgment against Defendants NNMC, Rosario Garcia, Alfred Herrera, Kevin Powers, Donald Martinez Jr., and Michael Branch, jointly and severally, including an award of attorney's fees and costs and for an award of compensatory damages and punitive damages in an amount to be proven at trial on the merits and any such further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jason Bowles
Jason Bowles
Bowles Law Firm
Post Office Box 25186
Albuquerque, NM 87125-0186
(505) 217-2680
Jason@bowles-lawfirm.com